

Billing Code 4810-25-M

DEPARTMENT OF THE TREASURY

Departmental Offices

**Interim Guidance Providing Procedure For Rebuttal of Presumption of Control of
an Insurer For Purposes of the Terrorism Risk Insurance Program**

AGENCY: Departmental Offices, Treasury.

ACTION: Notice.

SUMMARY: This notice provides interim guidance to insurers that wish to rebut a presumption of control by the Department of Treasury as administrator of the Terrorism Risk Insurance Program.

DATES: This notice is effective immediately and will remain in effect until superceded by regulations or by subsequent notice.

FOR FURTHER INFORMATION CONTACT: Mario Ugoletti, Deputy Director,
Office of Financial Institutions Policy 202-622-2730; Martha Ellett, Attorney-Advisor,
Office of the Assistant General Counsel (Banking and Finance) 202-622-0480.

SUPPLEMENTARY INFORMATION: This notice provides interim guidance to assist insurers that wish to rebut a presumption of controlling influence for purposes of the Terrorism Risk Insurance Program (the Program) established by Title I of the Terrorism Risk Insurance Act of 2002 (Pub.L.107-297) prior to the issuance by the Department of Treasury (Treasury) of regulations incorporating a procedure for rebuttal of a controlling influence presumption. This interim guidance remains in effect until superceded by regulations or subsequent notice.

I. Background

On November 26, 2002, the President signed into law the Terrorism Risk Insurance Act of 2002 (the Act). The Act became effective immediately. It establishes a temporary federal program of shared public and private compensation for insured commercial property and casualty losses resulting from an “act of terrorism,” as defined in the Act. The Program is administered and implemented by Treasury and will sunset on December 31, 2005.

Section 102(3) of the Act sets forth the Act’s definition of the term “control.” Treasury issued an interim final rule containing Program definitions, including the definition of an “affiliate” of an “insurer.” 68 FR 9803 (February 28, 2003). The definition of “affiliate” in the interim final rule incorporates the three categories in the statutory definition of control: (a) if an insurer directly or indirectly owns, controls or has the power to vote 25 percent or more of any class of voting securities of the other insurer; (b) if an insurer controls in any manner the election of a majority of the

directors or trustees of the other insurer; or (c) even if there is no control under (a) or (b), if the Secretary determines after notice and opportunity for hearing that an insurer directly or indirectly exercises a controlling influence over the management or policies of the other insurer.

In the interim final rule at 31 CFR 50.5(c)(2), Treasury established several rebuttable presumptions for purposes of a determination of controlling influence, and, therefore, of control by an insurer over another insurer for purposes of the Program. If an insurer controls another insurer, then, for example, their direct earned premiums are consolidated for purposes of calculating the insurer deductible. The rebuttable presumptions of control in the interim final rule apply unless (i) subsequently modified by Treasury by regulation or order, or (ii) an affected insurer or insurers makes a rebuttal submission to Treasury, as set forth below, and Treasury determines that no control relationship exists for purposes of the Program.

II. Interim Guidance

Treasury will be issuing regulations containing a procedure for rebutting presumptions of a controlling influence for purposes of the Program. Treasury is issuing the following procedure as interim guidance for an insurer (as that term is defined by Section 102 (6) of the Act and under Treasury's interim final regulations) to follow if such insurer wishes to rebut a presumption of controlling influence prior to the issuance of such regulations. This rebuttal procedure may also be found on Treasury's Terrorism Risk Insurance Program website at www.treasury.gov/trip.

Procedure for Rebutting Presumption of Control

(1) An insurer or insurers may make a written submission to Treasury to rebut a presumption, established under 31 CFR 50.5(c)(2), of a controlling influence by the insurer under the Program. Prior to establishment of a Terrorism Risk Insurance Program Office within Treasury, such rebuttal submissions shall be made to the Office of Financial Institutions Policy, Terrorism Risk Insurance Program, Room 3160 Annex, Department of Treasury, 1500 Pennsylvania Ave, NW, Washington DC 20220. The submission to rebut a controlling influence presumption should be entitled “Submission to Rebut Control Presumption” and should provide the full name and address of the submitting insurer(s) rebutting control and the name, title, address and telephone number of the designated contact person(s) for such insurer(s).

(2) Following receipt of a rebuttal submission, Treasury will review the submission and determine whether Treasury needs additional written or orally presented information from the submitting insurer in order to determine whether the presumption of controlling influence has been rebutted. In its discretion, Treasury may schedule a date, time and place for an oral presentation by the insurer(s).

(3) A rebuttal submission by an insurer or insurers under the Program shall provide all relevant facts and circumstances concerning the relationship(s) between or among the affected insurers; explain in detail why no controlling influence exists and provide support for why the rebuttable presumption should not apply in light of particular facts and circumstances and the Act’s language, structure and purpose.

(a) *General Information for Rebuttal Submission.* The types of information that Treasury may consider in reviewing rebuttal submissions include:

(i) The ownership structure of the insurer that is subject to the presumption of control, such as an organization chart and whether its stock or other capital is widely or closely held;

(ii) The degree to which the ownership or capacity providers of the insurer share in the profits and losses of the insurer;

(iii) The management structure of the insurer, including a description and copies of management contracts and any informal management arrangements;

(iv) Information on financial support provided by the insurer presumed in control to the insurer presumed to be controlled, including the nature and amount of debt instruments held by one insurer in the other and information on financial support provided by companies other than the insurer presumed to be in control;

(v) Information on who makes management, investment or other significant business decisions for the insurer presumed to be controlled and how these are made and similar information; and

(vi) Any other information that may be relevant to the determination of control.

(b) *Information for Rebuttal of Specific Presumptions.* In addition to the general information described above in (a), the types of information Treasury may review in connection with a rebuttal of a specific presumption includes the following:

(i) In rebutting a presumption based on a State determination of control, the insurer's submission must include a copy of the State's determination of control, the name, title and telephone number of the head of the appropriate State agency along with copies of relevant State regulations or rulings and citations to relevant statutes;

(ii) In rebutting a presumption based on provision by one insurer of 25 percent or more of capital, policyholder surplus or corporate capital, the insurer's submission should include financial and accounting statements for the most recent calendar year and copies of relevant financial and control information provided to State regulators; and

(iii) In rebutting a presumption based on the fact that an insurer supplies 25 percent or more of the underwriting capacity for that year to another insurer that is a

syndicate consisting of a group including incorporated and individual unincorporated underwriters, the insurer submission shall include financial statements for the most recent calendar year and copies of relevant financial and control information provided to State regulators.

(c) *Confidential Information.* Any confidential business or trade secret information submitted to Treasury in a rebuttal submission should be clearly marked.

(4) Treasury shall review and consider the insurer submission and other relevant facts and circumstances, including information provided by the insurer's State regulator.

Unless otherwise extended by Treasury, within 60 days after receipt of a complete submission, including any oral presentation, Treasury shall issue a final determination of whether a submitter has rebutted the relevant regulatory presumption of a controlling relationship for purposes of the Program. The determination shall set forth Treasury's basis for its determination.

III . Paperwork Reduction Act

The collection of information contained in this interim guidance has been reviewed and approved by the Office of Management and Budget (OMB) in accordance with the requirements of the Paperwork Reduction Act (44 U.S.C. 3507(j)) under control number 1505--0190. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB.

This information is required in order for Treasury to determine whether an insurer has rebutted the presumption of control. The collection of information is mandatory with respect to an insurer seeking to rebut the presumption of control.

The estimated average burden associated with the collection of information in this final rule is 40 hours per respondent.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to the Office of Financial Institutions Policy, Terrorism Risk Insurance Program, Room 3160 Annex, Department of Treasury, 1500 Pennsylvania Ave, NW, Washington DC 20220 and to OMB, Attention: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, D.C., 20503.

Dated: March 21, 2003

Wayne A. Abernathy

Assistant Secretary of the Treasury